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June 19, 2007

FILED/ACCEPTED
JUN 19 2007
Federal Communications Commission
Office of the Secretary

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Room TW-A325
Washington, DC 20554

**Re: Request for Declaratory Ruling of
The Named State Broadcasters Associations**

Dear Mr. Chairman:

On behalf of the State Broadcasters Associations identified below and pursuant to Section 1.2 of the Commission's rules, this letter is to respectfully request that the Commission promptly issue a declaratory ruling in connection with airtime sales programs such as those currently being offered by Bid4Spots, Inc. ("Bid4Spots"), SoftWave Media Exchange ("SoftWave") and Google Inc.-owned dMarc Broadcasting, Inc. ("Google").^{1/} The important legal issue at hand is whether a broadcast station participating in any of these programs must take into consideration the "sale price" of the airtime sold to advertisers under these programs when computing the station's lowest unit rate ("LUR").

Although differing slightly in their details, each of the programs involves the company's sale to advertisers of broadcast advertising time available on a network of stations affiliated with the company. The companies offering these programs are able to provide lower advertising rates through the use of reverse auction methodology, due to volume and the ability to offer advertisers an "unwired network" of affiliated stations. For example, Bid4Spots sells weekly "last-minute" radio airtime via an online reverse auction to a network of affiliated stations competing for advertisers. As explained on Bid4Spots' website, "It's a weekly reverse auction where radio stations (sellers) do the bidding for the advertiser's (buyer's) budget and spots selling for the lowest CPM (Cost

^{1/} See www.bid4spots.com, www.swmx.com, www.swmxradio.com, www.swmxtv.com, and www.dmarc.net.

per Thousand) win.”^{2/} Recently, Bid4Spots has teamed up with EBa^y Inc., allowing advertisers to bid on eBay for commercial time.

SoftWave sells both radio and television airtime by matching advertisers with a network of affiliated stations that can meet their needs. Specifically, the company matches advertiser marketing criteria with profiles of affiliated radio or television stations to create an “unwired network” of potential stations. Stations can then log onto the site to view a list of advertisers who want to purchase unsold radio inventory. If a station is willing to sell unsold time for the pre-determined Cost Per Thousand against the advertiser’s target demographic, it may then print the order, download produced creative (or script) from the site, and air the commercials the next day.^{3/}

Similarly, Google matches radio advertising inventory of its affiliated stations to paid advertising buys, delivering air-ready commercials directly to the affiliated radio broadcaster’s studio automation system.^{4/} Thousands of radio and television stations participate in these programs on a daily basis.

The Commission may, on motion or on its own motion, issue a declaratory ruling terminating a controversy or removing uncertainty.^{5/} In this case, a Commission ruling is urgently needed to remove the uncertainty that broadcasters participating in these programs face regarding the impact of these programs, if any, on the LURs to be charged political candidates.

Realistically speaking, the 2008 presidential campaign is already in full swing. Several debates among those who have proclaimed their intent to run for the presidency have already occurred. Many states are jockeying to be among the first in the nation to hold presidential primaries. At stake will be control of the White House, as well as of both houses of Congress, many Governor’s mansions, numerous state legislatures, and a multitude of other public offices at the state and local levels throughout our country. Some state and local elections are occurring this year. Moreover, the earliest presidential primaries are currently scheduled for dates in mid-January 2008, with other state primaries following close behind.^{6/} As a result, the earliest forty-five (45) day LUR periods will commence in early December 2008. Accordingly, time is of the essence.

^{2/} http://www.bid4spots.com/AD_Proc_Main.aspx.

^{3/} See <http://www.swmxradio.com/faq.cfm#5>.

^{4/} See <http://www.google.com/adsense/audio/overview.html>.

^{5/} 47 C.F.R. § 1.2; *see also* 5 U.S.C. § 554(e).

^{6/} Several states are considering changes to an earlier date. Therefore, exact dates are not yet known.

The broadcast industry will continue to play an important part in informing the citizenry, including through the sponsorship of debates and the opening up of their facilities for the sale of political advertising. In that latter regard, the broadcast industry operates under very detailed and strict political time regulations, including but not limited to the requirement that stations charge only their LUR for each class of airtime. By their very nature, the Commission's LUR regulations are quite complicated. However, each radio and television station strives to accurately determine its LUR and to insure that all "uses" occurring within the 45/60 day "windows" are always charged the station's LUR for each class of airtime purchased. Where a mistake is made, refunds are required, even after an election. The penalty for violations is substantial.

As mentioned above, the airtime sale programs of Bid4Spots, Softwave and Google are so popular that thousands of radio and television stations are now participating on a daily basis. Numerous stations have asked their respective State Associations whether these programs have an impact on a participating station's LUR. The concern is based on the fact that the FCC has never ruled on the applicability of its prior "network" precedent^{7/} to these types of Internet-driven programs, and no station wants to be caught unprepared with a candidate complaint during what is expected to be one of the hottest election periods in recent U.S. history, only to be told by the FCC that the station should have, or need not have, factored those programs into its LUR calculations and thus must now engage in the difficult and time consuming task of calculating new LURs, quickly getting in touch with affected candidates and offering more airtime, credits or rebates. Even if the FCC were to issue an adverse ruling that would apply only prospectively, potentially thousands of stations nationwide would still have to make adjustments to their LURs, contact candidates whose requests were in process, etc. Either way, any adjustment would involve thousands upon thousands of transactions that would have to be executed during the chaos of election season. Thus, the Commission's failure to resolve this issue now would cause substantial harm to broadcasters, as well as to the thousands of legally qualified candidates that are likely to run for public office in the months ahead.^{8/}

^{7/} See, e.g., *Use of Broadcast and Cablecast Facilities by Candidates for Public Office*, 34 FCC 2d 510 (1972), *Michael H. Bader*, 56 FCC 2d 840 (1975), *Robert L. Olender*, 61 FCC 2d 694 (1976), *Charles M. Firestone*, 5 FCC Rcd 3225 (1990).

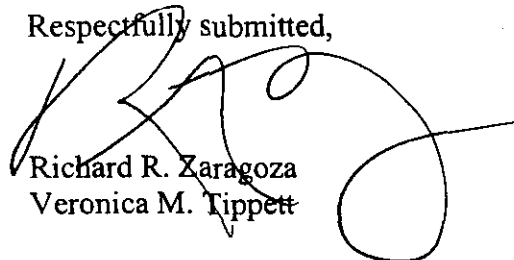
^{8/} Cf. *Omnipoint Communications, Inc.*, 11 FCC Rcd 10785 (1996) (In determining whether a party requesting a declaratory ruling has established the existence of controversy or uncertainty sufficient to warrant exercise of FCC's discretion to issue a ruling, FCC will consider whether the party has alleged personal injury fairly traceable to the issue presented and redressable by relief requested).

There is an additional factor that favors removing the uncertainty now. If a resolution of this matter were delayed until late into the election cycles when a particular candidate raises the issue with respect to a single station participating in one of these three programs, given the exigencies of the situation, the issue would likely have to be resolved in a pressure cooker atmosphere without the opportunity for broad input, and without regard to the applicability of the ruling to the other two programs that were not before the FCC at the time. In short, this is the best time to render a thoughtful decision on all of these programs outside the chaos of a campaign and at a time when stations are in the best position to integrate the substance of the Commission's ruling into their planning and operations.

We believe that the FCC has adequate information to make an informed judgment with respect to each program. Should the Commission disagree, it is free to ask each of the companies for more information. Their representatives are being copied on this letter. We understand that in separate visits to the Commission, each company has already described how their respective programs work and why they believe that their programs are in the nature of "unwired networks," so that none of the programs impacts a participating station's LUR. The positions of these three companies advocating the extension of prior precedent to these Internet-driven programs are reasonable. Moreover, all parties are proceeding in good faith, and the programs provided by the companies are very worthwhile. Therefore, the State Associations are supportive of the companies' efforts.

Thank you in advance for the Commission's timely consideration of this request.

Respectfully submitted,



Richard R. Zaragoza
Veronica M. Tippet

Counsel in this matter for the
State Broadcasters Associations in the
following states:

Alabama Broadcasters Association, Alaska
Broadcasters Association, Arizona Broadcasters
Association, Arkansas Broadcasters Association,
California Broadcasters Association, Colorado
Broadcasters Association, Connecticut Broadcasters

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Association, Florida Association of Broadcasters,
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Broadcasters Association, Indiana Broadcasters
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Association of Broadcasters, Missouri Broadcasters
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Nebraska Broadcasters Association, Nevada
Broadcasters Association, New Hampshire
Association of Broadcasters, New Jersey
Broadcasters Association, New Mexico
Broadcasters Association, The New York State
Broadcasters Association, Inc., North Dakota
Broadcasters Association, Ohio Association of
Broadcasters, Oklahoma Association of
Broadcasters, Oregon Association of Broadcasters,
Pennsylvania Association of Broadcasters, South
Carolina Broadcasters Association, South Dakota
Broadcasters Association, Tennessee Association of
Broadcasters, Texas Association of Broadcasters,
Utah Broadcasters Association, Vermont
Association of Broadcasters, Washington State
Association of Broadcasters, Wisconsin
Broadcasters Association

cc: The Honorable Michael J. Copps, FCC Commissioner
The Honorable Jonathan S. Adelstein,
The Honorable Deborah Taylor Tate, FCC Commissioner
The Honorable Robert M. McDowell, FCC Commissioner
Mary Beth Murphy, Division Chief, Policy Division
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Federal Communications Commission
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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Room TW-A325
Washington, DC 20554

**Re: Supplement to Request for Declaratory Ruling
of The Named State Broadcasters Associations
CIMS00000443846**

Dear Ms. Dortch:

On June 19, 2007, 40 State Broadcasters Associations jointly filed a request for declaratory ruling in connection with airtime sales programs such as those currently being offered by Bid4Spots, Inc., SoftWave Media Exchange, and Google Inc.-owned dMarc Broadcasting, Inc. A copy of the initial request is attached. As explained in that request, a Commission ruling is urgently needed to remove the uncertainty that broadcasters participating in these programs face regarding the impact of the programs, if any, on the lowest unit rates ("LURs") to be charged political candidates. Realistically speaking, the 2008 presidential campaign is already in full swing. Several debates among those who have proclaimed their intent to run for the presidency have already occurred. Many states are jockeying to be among the first in the nation to hold presidential primaries. Some state and local elections are occurring this year. Moreover, the earliest presidential primaries are currently scheduled for dates in mid-January 2008, with other state primaries following close behind. As a result, the earliest forty-five (45) day LUR periods will commence in early December 2007.^{1/} Accordingly, time is of the essence.

The Hawaii Association of Broadcasters, the Minnesota Broadcasters Association, the Mississippi Association of Broadcasters, the Radio Broadcasters Association of Puerto Rico, the Rhode Island Broadcasters Association, the West Virginia Broadcasters Association, and the Wyoming Association of Broadcasters hereby express their support

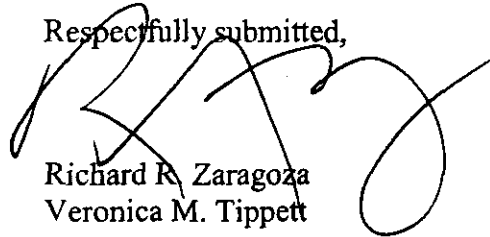
^{1/} The original request mistakenly indicated that the earliest LUR periods would commence in early December 2008. This supplement corrects that typographical error.

Ms. Marlene H. Dortch
June 22, 2007
Page 2

of the declaratory ruling request, and ask the Commission to add their names to those of the 40 State Broadcasters Associations already supporting the positions expressed therein.

Thank you for your attention to this matter. Please contact either of the undersigned should you have any questions.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to be 'R. Zaragoza', is written over the typed name and extends to the right.

Richard R. Zaragoza
Veronica M. Tippet

Counsel for the Hawaii Association of Broadcasters, the Minnesota Broadcasters Association, the Mississippi Association of Broadcasters, the Radio Broadcasters Association of Puerto Rico, the Rhode Island Broadcasters Association, the West Virginia Broadcasters Association, and the Wyoming Association of Broadcasters in this matter

cc: The Honorable Kevin J. Martin, FCC Chairman
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The Honorable Jonathan S. Adelstein, FCC Commissioner
The Honorable Deborah Taylor Tate, FCC Commissioner
The Honorable Robert M. McDowell, FCC Commissioner
Mary Beth Murphy, Division Chief, Policy Division
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Federal Communications Commission
Bureau / Office

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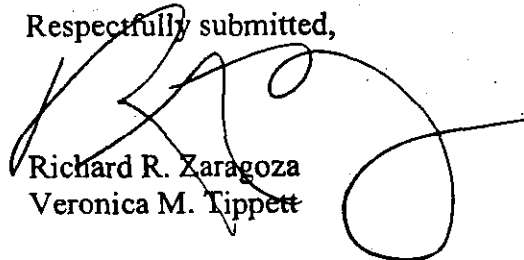
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Association of Broadcasters, New Jersey
Broadcasters Association, New Mexico
Broadcasters Association, The New York State
Broadcasters Association, Inc., North Dakota
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Broadcasters, Oklahoma Association of
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Carolina Broadcasters Association, South Dakota
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